

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8606 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

R J DAMOR

Versus

STATE OF GUJARAT

Appearance:

MR PV HATHI for Petitioners
MR DA BAMBHANIA for Respondent No. 1
GOVERNMENT PLEADER for Respondent No. 2
MRS SANGEETA N PAHWA for Respondent No. 3
MR VD PARGHI for Respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/08/97

C.A.V JUDGEMENT

#. Heard learned counsel for the parties.

#. The petitioners, in all twenty in number, holding the post of Deputy Mamlatdars in Revenue Department,

Government of Gujarat, filed this Special Civil Application before this Court and prayer has been made for direction to respondent No.1 to promote them on the vacancies reserved for ST candidates as Mamlatdars and to give them deemed date of promotion on and from the date when they became eligible for promotion. Further prayer has been made that respondent No.1 be restrained from making appointment by direct recruitment on the post of Mamlatdars pursuant to the advertisement annexure 'D' till all the posts reserved for ST candidates and which are carried forward are not filled up by issuing the orders of promotion of the petitioners and such other ST candidates available in the District of Panchmahals or in any other District.

#. The recruitment and other service conditions to the post of Mamlatdar are regulated under the provisions of Mamlatdars' Recruitment Rules, 1973 (hereinafter referred to as 'Rules 1973'). These posts have to be filled in by direct recruitment and by promotion, in the ratio as provided under the Rules 1973. The petitioners belong to Schedule Tribe (ST) category and are working in the office of Collector, Panchmahals District. All the petitioners have passed lower and higher revenue qualifying examinations within stipulated period and they acquired eligibility for promotion to the post of Mamlatdar. Several vacancies for SC and ST candidates have been carried forward from 1983 as the Gujarat Public Service Commission ('GPSC' for short) could not conduct departmental examination for promotion and backlog of 173 vacancies of ST candidates were carried forward and 151 posts remained vacant to be filled in as sufficient number of eligible candidates for promotion were not available. So 53 posts available for promotion were converted for the purpose of direct recruitment which should not have been done in view of statutory fixed quota for promotes and direct recruits. This decision has been taken by respondent on 15th September 1989 and necessary requisition has been sent to GPSC.

#. The learned counsel for the petitioners does not dispute that on 15th September 1989, none of the petitioners was eligible for promotion to the post of Mamlatdar. The GPSC advertised these posts vide Advertisement dated 29th August 1991, as per respondents' reply and on 23rd August 1991, as per the petitioners' case. All these 53 reserved posts to be filled in by promotion were advertised to be filled in by direct recruitment from reserved category. That was a combined advertisement for 64 class I posts and 91 class II posts of reserved SC/ST categories. The grievance of the

petitioners is that before advertisement of these vacancies by the GPSC for direct recruitment, they have become eligible and available for promotion and as such, the respondent could not have proceeded by that recruitment. It is further their grievance that the petitioners are not graduate and therefore cannot compete in the direct recruitment and they can claim these posts only by way of promotion.

#. This petition has been admitted by this Court and interim relief has been granted only to the extent that the respondents may proceed with appointments on the rest of posts of Mamlatdar and other services and only 25 posts of Mamlatdar may not be filled in.

#. Shri P.V.Hathi, learned counsel for the petitioners contended that the petitioners have become eligible before the advertisement has been issued and as such, the respondents should not have proceeded to make appointments by way of direct recruitment on 53 posts of Mamlatdars. These posts were reserved for promotion and the same have been dereserved at one point of time as the eligible candidates were not available for promotion, but that reason no more survives on the date on which advertisement has been issued inviting applications for the post and the respondents should not have proceeded with direct recruitment, as the petitioners became eligible for promotion on the date of advertisement. It has next been contended that under the relevant Rules 1973 there is no provision for dereservation of the reserved quota of promotional posts to be filled in by direct recruitment in case of non availability of eligible persons for promotion and it could not have been done by executive fiat.

#. On the other hand, Shri D.A. Bambhania, learned counsel for respondent-State, submitted that the decision to convert promotion quota posts, because of non availability of eligible candidates by promotion, by direct recruitment of candidates belonging to ST, has been taken pursuant to agreement with Association of SC/ST employees and as such, it does not lie in the mouth of petitioners to make any grievance in this respect. It has next been contended that the petitioners were not eligible for promotion on the day on which decision has been taken for dereservation of posts by direct recruitment and the respondents are filling up those posts only from reserved category candidates. When the petitioners were not eligible, they cannot make any grievance. Shri Bambhania, carrying this contention further, submitted that otherwise also number of posts of

reserved category are available for promotion and the petitioners will not suffer any loss, and as and when their turn comes, they will be given promotion. Shri Bambhania has brought to the notice of this Court that the petitioners No.1 and 2 have already been given promotion and promotion of some other petitioners are in contemplation.

#. The learned counsel for intervenors, Shri Paresh Upadhyay contended that Rule 9 of the Gujarat Civil Services Classification & Recruitment (General) Rules 1967 has been amended vide Notification dated 29th December 1989 and necessary provision has been made for dereservation of the posts by direct recruitment in lieu of promotion as the case may be, to be filled in case of non availability of suitable candidates by either of the modes. This amendment has been brought into force only on the basis of agreement entered into between the Government and the SC/ST Employees' Association and whatever administrative decisions which were taken earlier, have been given legal shape. Shri Upadhyay next contended that out of 151 posts, 53 posts are dereserved from promotional quota and were to be filled in by direct recruitment from reserved category. Though it has been given out that 53 posts of promotion quota have been dereserved, but in fact, out of 173 backlog posts of ST candidates, about 40 posts are to be filled in by direct recruitment otherwise. So, it is fallacy on the part of the respondent-Government also to say that 53 posts of promotional quota have been converted or dereserved. In fact, as 40 backlog posts were available to be filled in by direct recruitment from reserved category, if we go by this number, only 13 posts can be said to be converted or dereserved from promotional quota. In the department, the officers available for promotion were not eligible and the posts were carried forward from time to time. So the decision taken to fill up the posts by direct recruitment in the circumstances cannot be said to be arbitrary or perverse. Otherwise also, sufficient number of posts are still available for promotion and the petitioners will not suffer any loss. On the other hand, by filing this Special Civil Application, the appointments of the intervenors have been stalled by petitioners. A serious complaint has been made by Shri Upadhyay against the Government that though this Court has ordered that only 25 posts of Mamlatdar may not be filled by direct recruitment, the respondents have raised their hands in the matter and even on those posts which were not disputed or in litigation, appointments have not been made. The selectees have unnecessarily been put to suffer loss for all these years.

#. Shri V.D.Parghi, learned counsel for other intervenors, supported the arguments advanced by learned counsel Shri Paresh Upadhyay.

##. I have given my thoughtful considerations to the submissions made by learned counsel for parties.

##. Shri P.V.Hathi, learned counsel for the petitioners very fairly admits that out of 151 posts of reserved category, 40 posts could have been filled in by direct recruitment. In view of this admission, the fact remains that otherwise also, the picture which has been painted of dereservation of 53 posts, seems to be not correct. Out of these 53 posts, in all circumstances, 40 posts were certainly available for direct recruitment and could have been filled in by that mode. So in substance, the petitioners could have made grievance only on 13 posts and not on 53 posts. From the reply filed by respondents, and the facts mentioned therein which have not been controverted by petitioners, it is clear that sufficient number of posts for promotion are still available even after filling 53 posts by direct recruitment. The petitioners were not eligible for promotion, on the day on which a decision has been taken to fill up 53 posts by direct recruitment by dereserving these posts to be filled in by promotion, and as such they have no locus-standi to make any grievance against the process of selection which has started for filling of these 53 posts by direct recruitment. Much emphasis has been laid down by learned counsel for petitioner that the fact of non availability of eligible candidates by promotion should have been taken note of on the date of advertisement of these posts by GPSC, but in support of this contention, the learned counsel for the petitioners is unable to cite any rule framed under Article 309 of the Constitution or any Resolution or Circular of the Government as well as any judicial precedent. The crux of the matter is that the day on which the decision has been taken to dereserve 53 posts out of 151 posts of reserved category, and the same to be filled in by direct recruitment, the petitioners were not eligible for promotion. They were also not eligible to compete in the direct recruitment as none of them have, as per their own case, graduation degree. How can the officers, who were not eligible for promotion, make a grievance against the decision of the Government to dereserve the posts for filling up the same by direct recruitment. It is a fact that the posts of reserved category were carried forward year to year and the accumulated backlog has come to 151. The respondents have acted very fairly and reasonably in

the matter and they have made an attempt to fill up the posts of reserved category from the open market. The respondents have also taken care to see that all the posts of reserved category to be filled in by promotion are not dereserved. Otherwise, looking to the facts of this case, the respondents, if they wanted to act arbitrarily or with some oblique motive against the petitioners, could have dereserved all 151 posts and could have decided to fill in all these posts by direct recruitment. But the fact that only 53 posts have been dereserved out of 151 gives out the intention that the Government has also taken care that sufficient number of posts still remain vacant for the persons who may become eligible for promotion in future. There is a mandate from time to time of the Government that backlog vacancies of reserved categories should be filled in and in furtherance of that mandate this exercise has been undertaken. It was perfectly legal and justified action on the part of respondent No.1 and no exception can be taken to it by petitioners or this Court. It is not a case where any of the legal or fundamental rights of the petitioners are being infringed. It is a case, on the other hand, where the petitioners have, though they were not eligible for promotion on the relevant date, by filing this Special Civil Application, stalled the appointments of the persons of their own category. This litigation is only an example to show how the reserved category has acted detrimental to its own category.

##. Taking into consideration the totality of the facts of the case, I do not find any substance in this Special Civil Application and the same deserves to be dismissed. Order accordingly. The Special Civil Application is dismissed. Rule discharged. Interim relief granted by this Court stands vacated.

##. So far as the respondent No.3-GPSC is concerned, the petitioners have wrongly joined it as a party. After going through writ petition, I do not find that any legitimate grievance should have been made by petitioners against GPSC. The GPSC is a constitutional authority which has been assigned the work of making selection for appointments in the State or subordinate services. It is only an authority which undertakes selection process, but it is not an appointing authority. As and when requisition is received by GPSC, it starts the process of selection and after making selection it sends name of selected candidates to the appointing authority. So for the purpose of conversion or dereservation of posts available for promotion, into the posts for direct recruitment or vice-versa is concerned, GPSC does not

come in picture. It is a case where the petitioners have deliberately made GPSC a party which was neither proper nor necessary party. The GPSC has unnecessarily been burdened by petitioners, without any justification, for the costs of this litigation. The petitioners are therefore directed to pay Rs.2,000/= to respondent No.3-GPSC by way of costs of this litigation.

(sbl)